

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:06

PLR-137420-06

Date:

November 16, 2006

### Legend:

New Parent =

Former Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State X =

State Y =

Company Officials =

Tax Professional =

Dear :

This letter responds to a letter dated July 27, 2006, submitted on behalf of New Parent, requesting an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file an election. New Parent is requesting an extension for New Parent, Former Parent, Sub 1, Sub 2, and Sub 3 to elect under § 1.1502-75(a)(1) of the Income Tax Regulations to file a consolidated federal income tax return, with New Parent as the common parent, (the "Election") effective for the taxable year ending on Date 5. The material information submitted is summarized below

Former Parent is an operating company that was incorporated in State X on Date 1. Former Parent wholly owns Sub 1 and Sub 2. Former Parent, Sub 1, and Sub 2 joined in filing a consolidated federal income tax return, with Former Parent as the common parent, for the group's first taxable year ending on Date 2. New Parent was incorporated in State Y on Date 3. New Parent wholly owns Sub 3, a dormant subsidiary without assets or operations. On Date 4, in a transaction that did not qualify as a reverse acquisition under § 1.1502-75(d)(3), New Parent acquired 100% of the outstanding shares of Former Parent, terminating the Former Parent consolidated group and creating a new affiliated group with New Parent as the common parent of Former Parent, Sub 1, Sub 2, and Sub 3.

An election under § 1.1502-75(a)(1) for New Parent's affiliated group to file a consolidated return for its taxable year ending Date 5 was due on the last day prescribed by law (including extensions of time) for filing New Parent's return. However, for various reasons a valid Election was not filed. The period of assessment under § 6501(a) has not expired for New Parent or any of its includible subsidiaries for the taxable year for which relief may be granted under this ruling request.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member of the group during any part of the taxable year for which the consolidated return is to be filed consents to the regulations under § 1502. If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for filing the common parent's return.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Requests for relief under § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by the regulations (i.e., § 1.1502-75(a)(1)). Therefore, the Commissioner has discretionary authority under § 301.9100-3 to grant an extension of time for New Parent and its subsidiaries to file the Election, provided New Parent shows that it acted reasonably and in good faith, the requirements

of § 301.9100-1 and § 301.9100-3 are satisfied, and that granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by New Parent, Company Officials, and Tax Professional explain the circumstances that resulted in the failure to timely file the Election. The information establishes that the request for relief was initiated before the failure to make the Election was discovered by the Internal Revenue Service, and that New Parent reasonably relied on a qualified tax professional who failed to make, or advise New Parent to make, the Election, and that the government will not be prejudiced if relief is granted. See § 301.9100-3(b)(i) and (v).

Based on the facts and information submitted, including the representations made, we conclude that New Parent has shown that it acted reasonably and in good faith, the requirements of §§ 301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, an extension of time is granted under § 301.9100-1, until 45 days from the date on this letter, for New Parent and its includible subsidiaries to file the Election by filing a consolidated return for the taxable year ending on Date 5 and attaching a Form 1122 for each of the subsidiaries.

The above extension of time is conditioned on New Parent's and its subsidiaries' tax liability being not lower, in the aggregate, for the taxable year for which the Election applies, and all subsequent years, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to New Parent's or its subsidiaries' tax liability for the years involved. A determination thereof will be made by the Director's office upon audit of the federal income tax returns involved. Further, no opinion is expressed as to the federal income tax effect, if any, if it is determined that the New Parent's and its subsidiaries' tax liability is lower. Section 301.9100-3(c).

We express no opinion with respect to whether, in fact, New Parent and its subsidiaries qualify substantively to file a consolidated return. In addition, we express no opinion as to the tax effects or consequences of filing the return or the Election late under the provisions of any other section of the Code or regulations, or as to the tax treatment of any conditions existing at the time of, or effects resulting from, filing the return or the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under § 301.9100-3 we relied on certain statements and representations made by New Parent and/or its representatives. However, the Director should verify all essential facts. Moreover, notwithstanding that the extension is granted under § 301.9100-3 to file the Election, any penalties and interest that would otherwise be applicable still apply.

This ruling letter is directed only to the taxpayers requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, if New Parent and its subsidiaries file electronically, this requirement may be satisfied by attaching a statement to the return that provides the date and control number of this letter ruling.

Sincerely,

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Ken Cohen  
Senior Technician Reviewer, Branch 3  
Office of Associate Chief Counsel  
(Corporate)